

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
April 14, 2009 Session

MARY HYDE RUTLEDGE v. ROBERT LEE RUTLEDGE

Appeal from the Chancery Court for Giles County
No. 3231 Jim T. Hamilton, Judge

No. M2008-01917-COA-R3-CV - Filed May 20, 2009

After entry of Agreed Order that granted a divorce and divided the parties' assets and liabilities, Husband appealed the Agreed Order alleging Wife withheld relevant financial information. The appeal is dismissed since the avenue to challenge an order based upon misconduct is under Tenn. R. Civ. Pro. 60.02, which gives the trial court an opportunity to decide the issue prior to any appeal.

Tenn. R. App. P. 3 Appeal as of Right; Appeal Dismissed

PATRICIA J. COTTRELL, P.J., M.S., delivered the opinion of the court, in which FRANK G. CLEMENT, JR. and ANDY D. BENNETT, JJ., joined.

Robert Lee Rutledge, Prospect, Tennessee, Pro Se.

David A. Kozlowski, Columbia, Tennessee, for the appellee, Mary Hyde Rutledge.

MEMORANDUM OPINION¹

Mary Hyde Rutledge filed to dissolve her forty-eight (48) year marriage to Robert Lee Rutledge on May 12, 2005. After participating in discovery, three years later the parties were able to agree on both the divorce and their financial settlement. Consequently, the trial court's July 28, 2008 order granting the divorce reflects that the parties agreed that there were grounds for the divorce and includes their agreement on the division of their assets and liabilities. Both parties and their counsel approved this order and initialed each page.

¹Tenn. R. Ct. App. 10 states:

This Court, with the concurrence of all judges participating in the case, may affirm, reverse or modify the actions of the trial court by memorandum opinion when a formal opinion would have no precedential value. When a case is decided by memorandum opinion it shall be designated "MEMORANDUM OPINION," shall not be published, and shall not be cited or relied on for any reason in any unrelated case.

After entry of the July 28, 2008 order, it does not appear that either party petitioned the trial court further.

Mr. Rutledge has filed an appeal *pro se* alleging that Mrs. Rutledge withheld relevant information about their finances in the course of discovery between the parties. At oral argument, Mr. Rutledge acknowledged that he was aware of this financial information, but stated that his attorneys neglected to present it to the court.² Mr. Rutledge is not asking this court to review a decision by the trial court or arguing that the trial court erred, since the issue was never presented to the trial court. If Mr. Rutledge believes he should be relieved of the July 2008 order due to any misconduct by Mrs. Rutledge or any other reason recognized by law, then one avenue open to him is to file a motion with the trial court under Rule 60.02 of the Tennessee Rules of Civil Procedure, which provides, in pertinent part:

On motion and upon such terms as are just, the court may relieve a party or the party's legal representative from a final judgment, order or proceeding for the following reasons: (1) mistake, inadvertence, surprise or excusable neglect; (2) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (3) the judgment is void; (4) the judgment has been satisfied, released or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that a judgment should have prospective application; or (5) any other reason justifying relief from the operation of the judgment. The motion shall be made within a reasonable time, and for reasons (1) and (2) not more than one year after the judgment, order or proceeding was entered or taken. A motion under this Rule 60.02 does not affect the finality of a judgment or suspend its operation, but the court may enter an order suspending the operation of the judgment upon such terms as to bond and notice as to it shall seem proper pending the hearing of such motion. This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order or proceeding, or to set aside a judgment for fraud upon the court.

If a Rule 60.02 motion is filed with the trial court and if either party is dissatisfied with the trial court's ruling, then such party may appeal the trial court's order on the Rule 60 motion to this court.

The appeal of Mr. Rutledge is dismissed. Costs of this appeal are taxed to the appellant, Robert Lee Rutledge for which execution may issue if necessary.

PATRICIA J. COTTRELL, JUDGE

²The record reflects that Mr. Rutledge had a succession of five attorneys who represented him in this divorce.